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the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the judge for an *in camera* determination of the claim. The producing party must preserve the information until the claim is resolved.

[80 FR 28785, May 19, 2015, as amended at 80 FR 37539, July 1, 2015]

§ 18.52 Protective orders.

(a) *In general.* A party or any person from whom discovery is sought may file a written motion for a protective order. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without the judge's action. The judge may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (1) Forbidding the disclosure or discovery;
 - (2) Specifying terms, including time and place, for the disclosure or discovery;
 - (3) Prescribing a discovery method other than the one selected by the party seeking discovery;
 - (4) Forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;
 - (5) Designating the persons who may be present while the discovery is conducted;
 - (6) Requiring that a deposition be sealed and opened only on the judge's order;
 - (7) Requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way;
 - and
 - (8) Requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the judge directs.
- (b) *Ordering discovery.* If a motion for a protective order is wholly or partly

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denied, the judge may, on just terms, order that any party or person provide or permit discovery.

§ 18.53 Supplementing disclosures and responses.

(a) *In general.* A party who has made a disclosure under § 18.50(c)—or who has responded to an interrogatory, request for production, or request for admission—must supplement or correct its disclosure or response:

(1) In a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or

(2) As ordered by the judge.

(b) *Expert witness.* For an expert whose report must be disclosed under § 18.50(c)(2)(ii), the party's duty to supplement extends both to information included in the report and to information given during the expert's deposition. Any additions or changes to this information must be disclosed by the time the party's prehearing disclosures under § 18.50(c)(3) are due.

[80 FR 28785, May 19, 2015, as amended at 80 FR 37540, July 1, 2015]

§ 18.54 Stipulations about discovery procedure.

Unless the judge orders otherwise, the parties may stipulate that:

(a) A deposition may be taken before any person, at any time or place, on any notice, and in the manner specified—in which event it may be used in the same way as any other deposition; and

(b) Other procedures governing or limiting discovery be modified— but a stipulation extending the time for any form of discovery must have the judge's approval if it would interfere with the time set for completing discovery, for hearing a motion, or for hearing.

§ 18.55 Using depositions at hearings.

(a) *Using depositions—*(1) *In general.* If there is no objection, all or part of a deposition may be used at a hearing to the extent it would be admissible under the applicable rules of evidence as if

the deponent were present and testifying.

(2) *Over objection.* Notwithstanding any objection, all or part of a deposition may be used at a hearing against a party on these conditions:

(i) The party was present or represented at the taking of the deposition or had reasonable notice of it;

(ii) It is used to the extent it would be admissible under the applicable rules of evidence if the deponent were present and testifying; and

(iii) The use is allowed by paragraphs (a)(3) through (9) of this section.

(3) *Impeachment and other uses.* Any party may use a deposition to contradict or impeach the testimony given by the deponent as a witness, or for any other purpose allowed by the applicable rules of evidence.

(4) *Deposition of party, agent, or designee.* An adverse party may use for any purpose the deposition of a party or anyone who, when deposed, was the party's officer, director, managing agent, or designee under § 18.64(b)(6) or § 18.65(a)(4).

(5) *Deposition of expert, treating physician, or examining physician.* A party may use for any purpose the deposition of an expert witness, treating physician or examining physician.

(6) *Unavailable witness.* A party may use for any purpose the deposition of a witness, whether or not a party, if the judge finds:

(i) That the witness is dead;

(ii) That the witness is more than 100 miles from the place of hearing or is outside the United States, unless it appears that the witness's absence was procured by the party offering the deposition;

(iii) That the witness cannot attend or testify because of age, illness, infirmity, or imprisonment;

(iv) That the party offering the deposition could not procure the witness's attendance by subpoena; or

(v) on motion and notice, that exceptional circumstances make it desirable—in the interests of justice and with due regard to the importance of live testimony in an open hearing—to permit the deposition to be used.

(7) *Limitations on use—(i) Deposition taken on short notice.* A deposition must not be used against a party who, hav-

ing received less than 14 days' notice of the deposition, promptly moved for a protective order under § 18.52(a)(2) requesting that it not be taken or be taken at a different time or place—and this motion was still pending when the deposition was taken.

(ii) *Unavailable deponent; party could not obtain a representative.* A deposition taken without leave of the judge under the unavailability provision of § 18.64(a)(2)(i)(C) must not be used against a party who shows that, when served with the notice, it could not, despite diligent efforts, obtain a representative to represent it at the deposition.

(8) *Using part of a deposition.* If a party offers in evidence only part of a deposition, an adverse party may require the offeror to introduce other parts that in fairness should be considered with the part introduced, and any party may itself introduce any other parts.

(9) *Deposition taken in an earlier action.* A deposition lawfully taken may be used in a later action involving the same subject matter between the same parties, or their representatives or successors in interest, to the same extent as if taken in the later action. A deposition previously taken may also be used as allowed by the applicable rules of evidence.

(b) *Objections to admissibility.* Subject to paragraph (d)(3) of this section, an objection may be made at a hearing to the admission of any deposition testimony that would be inadmissible if the witness were present and testifying.

(c) *Form of presentation.* Unless the judge orders otherwise, a party must provide a transcript of any deposition testimony the party offers, but the judge may receive the testimony in nontranscript form as well.

(d) *Waiver of objections—(1) To the notice.* An objection to an error or irregularity in a deposition notice is waived unless promptly served in writing on the party giving the notice.

(2) *To the officer's qualification.* An objection based on disqualification of the officer before whom a deposition is to be taken is waived if not made:

(i) Before the deposition begins; or

(ii) Promptly after the basis for disqualification becomes known or, with

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reasonable diligence, could have been known.

(3) *To the taking of the deposition—(i) Objection to competence, relevance, or materiality.* An objection to a deponent's competence—or to the competence, relevance, or materiality of testimony—is not waived by a failure to make the objection before or during the deposition, unless the ground for it might have been corrected at that time.

(ii) *Objection to an error or irregularity.* An objection to an error or irregularity at an oral examination is waived if:

(A) It relates to the manner of taking the deposition, the form of a question or answer, the oath or affirmation, a party's conduct, or other matters that might have been corrected at that time; and

(B) It is not timely made during the deposition.

(iii) *Objection to a written question.* An objection to the form of a written question under § 18.65 is waived if not served in writing on the party submitting the question within the time for serving responsive questions or, if the question is a recross-question, within 7 days after being served with it.

(4) *To completing and returning the deposition.* An objection to how the officer transcribed the testimony—or prepared, signed, certified, sealed, endorsed, sent, or otherwise dealt with the deposition—is waived unless a motion to suppress is made promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known.

§ 18.56 Subpoena.

(a) *In general.* (1) Upon written application of a party the judge may issue a subpoena authorized by statute or law that requires a witness to attend and to produce relevant papers, books, documents, or tangible things in the witness' possession or under the witness' control.

(2) *Form and contents—(i) Requirements—in general.* Every subpoena must:

(A) State the title of the matter and show the case number assigned by the Office of Administrative Law Judges or the Office of Worker's Compensation Programs. In the event that the case

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number is an individual's Social Security number only the last four numbers may be used. *See* § 18.31(a)(1);

(B) Bear the signature of the issuing judge;

(C) Command each person to whom it is directed to do the following at a specified time and place: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises; and

(D) Set out the text of paragraphs (c) and (d) of this section.

(ii) *Command to attend a deposition—notice of the recording method.* A subpoena commanding attendance at a deposition must state the method for recording the testimony.

(iii) *Combining or separating a command to produce or to permit inspection; specifying the form for electronically stored information.* A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition or hearing, or may be set out in a separate subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(iv) *Command to produce; included obligations.* A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding party to permit inspection, copying, testing, or sampling of the materials.

(b) *Service—(1) By whom; tendering fees; serving a copy of certain subpoenas.* Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance, tendering with it the fees for 1 day's attendance and the mileage allowed by law. Service may also be made by certified mail with return receipt. Fees and mileage need not be tendered when the subpoena issues on behalf of the United States or any of its officers or agencies. If the subpoena